IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3504 of 1991

For Approval and Signature:

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RATHOD RATNABHAI KARSANBHAI - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MS TEJAL VASHI for Petitioner(s)
MR KRUNAL D PANDYA, AGP for Respondent(s)

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CORAM : HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 23/02/2007

ORAL JUDGMENT

1. This petition, under Article 226 of the Constitution of India, has been filed by the petitioner, i.e. Mr.Ratnabhai Karsanbhai Rathod, with a prayer to grant a Writ of Mandamus or any other appropriate Writ, order or direction, restraining the respondents from terminating his services for four months during the monsoon period and also to declare the policy and practice adopted by the respondents of giving appointment for four months as ultra vires of Articles 14 and 16 of the Constitution of India.

2. This petition was placed for admission hearing on 14.5.1991, on which date, Rule was issued and ad-interim relief restraining the respondents from terminating the services of the petitioner was granted. As a result, the petitioner is still in service.

3. This Court has heard Ms.Tejal Vashi, learned counsel for the petitioner and Mr.Krunal D.Pandya, learned Assistant Government Pleader for the respondents and has gone

through the averments made in the petition.

4. Although Rule has been issued on 14.5.1991, no reply has been filed by the respondents. Therefore, this Court has no other option but to resort to the averments made in the pleadings as well as the submissions made by the learned counsel for the parties at the Bar in order to decide the issues involved in the Writ Petition. A perusal of the averments made in the petition reveals that the petitioner is working as a Peon with the respondents since the year 1982. His appointment has been made purely on temporary basis as is evident from perusal of Annexure-B which is his appointment order. It is the case of the petitioner that the respondents are resorting to unfair labour practices by making temporary appointments against the posts which are of permanent nature. The apprehension of the petitioner is that his services are liable to be terminated in the monsoon period for about four months and

other persons may be appointed on daily wage basis by the respondents.

5. A perusal of the averments made in the petition makes it clear that the petitioner has approached this Court purely on the basis of apprehension of termination of his services. One of the prayers made in the petition is that the policy and practice of the respondents, including the Resolutions, Circulars and Rules for giving appointments for four months be declared ultra vires of Articles 14 and 16 of the Constitution of India. However, none of these Government Resolutions, Circulars or Rules have been brought on the record and it is not at all clear how such Resolutions, Circulars or Rules may be relevant to the case of the petitioner. Moreover, the Court cannot give direction which impinge upon the policy decisions of the State Government. Therefore, this prayer made by the petitioner cannot be granted.

6. As regards the prayer of quashing and setting aside the proposed order of termination of the services of the petitioner, it is relevant to note that the due continuance of ad-interim relief granted by this Court, which continues till date, the petitioner is still in service. Therefore, this relief claimed by the petitioner now does not survive.

7. In view of the above position, no other order need be passed, save and except that the respondents may not terminate the services of the petitioner, except in accordance with law. The Special Civil Application is disposed of accordingly. Rule is made absolute to the extent indicated above. There shall be no orders as to costs.

(Smt.Abhilasha Kumari, J.)

(sunil)